IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 227 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATVARSINH NATTHUSINH ADMAR

Versus

ADDITIONAL DEVELOPMENT COMMISSIONER

Appearance:

MR MB GANDHI with MR. M.C. BHATT for Petitioner

MR. V.B. GHARANIA, AGP, for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

MR SHIRISH JOSHI for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/03/2000

ORAL JUDGEMENT

The petitioner challenges the order of the respondent No. 1 dated 7.1.1999 confirming the order of

the respondent No. 2 which was made under Section 57(1) of the Gujarat Panchayats Act, ordering removal of the petitioner who was working as Sarpanch of Tarsadi Gram Panchayat in the District of Surat. It appears from the record which includes compilation which is placed on record that, according to the petitioner the P.A. to the then Minister had sent a communication dated 30.5.1998 to the District Development Officer. for instituting enquiry against the petitioner under Section 57 of the Act on the basis of the application dated 30.3..1998 which was given by one local leader of a political party, named in the communication. The District Development Officer was required to take steps under Section 57 of the Act and inform about the same to the Minister. A copy of that communication is at Annexure-I to the petition. Thereafter, the District Development Officer sent a communication dated 31.7.1998 at Annexure-J to the petition informing the concerned Minister that proceedings had been initiated against the petitioner under Section 57(1) of the Act. Thereafter, by a fax message dated 3.8.1998 at Annexure-K to the petition sent in context of enquiry by the Minister, the District Development Officer was required to submit his report in the matter of action taken by him against Sarpanch i.e. the petitioner within three days . On 8.5.1998 a letter was sent to the District Development Officer as per Annexure-F to the petition seeking information about the action under Section 57 of the said Act against the petitioner. By letter dated 29.5.1998 addressed by the District Development Officer to the Taluka Development Officer with a copy to the Secretary to the Minister concerned who made enquiry by their letter dated 8.5.1998, the District Development Officer virtually threatened to take disciplinary action against the Taluka Development Officer unless concrete steps were taken for submitting a report for holding an enquiry under Section 57 of the Act against the petitioner. On 3.8.1998, a fax message was received, in context of the enquiry made by the Minister, by the District Development Officer requiring him to immediately report as to what action was taken against the petitioner. Immediately thereafter on 4.8.1998 a show cause notice under Section 57(1) of the said Act was issued to the petitioner as per Annexure-A to the petition. The above facts are stated only with a view to show the keen interest that was being taken by the higher ups for proceeding against the petitioner under Section 57(1) of the Act.

In the show cause notice there were six allegations levelled against the petitioner. The first allegation was that only one meeting of the gram sabha

was called and therefore there was violation of the provisions of Section 93 of the said Act. The next allegation was that land of survey No. 385 which was shown at the agenda item No. 4 of the meeting of the gram panchayat held on 2.12.1997 was handed over to the then `Tarsadi Sahakari Co-operative Consumer Stores' without seeking approval of the competent authority. It was next alleged that for the years 1997-98, a fountain was constructed for a sum of Rs. 2,00,355/- without getting technical and administrative sanction and that a completion certificate was not obtained. It was further alleged that expenses of the work of road repairs and drainage which was to be done in 1997-98 exceeded the budgeted amount and that work was done without issuing any public notice inviting the rates and also without getting technical and administrative sanction. The completion certificate was also not obtained. The fifth charge was that in carrying out the work of installing street lights an amount of Rs. 18,93,160/- was expended as against the earmarked amount of Rs. 9 lakhs and technical and administrative sanction was not obtained and further that rates were not invited by a public notice and completion certificate was also not obtained. It was finally alleged that instead of laying cast iron pipe lines for water supply scheme, PVC pipe lines were laid and that rates were not invited by any public notice as also technical and administrative sanction was not obtained. It was alleged that the petitioner while functioning as a Sarpanch had committed these administrative and financial irregularities warranting enquiry under Section 57(1) of the said Act.

A detailed reply was given to the show cause notice by the petitioner, a copy of which is at Annexure-B to the petition. As regards, allegation that the meeting of the Gram Sabha was called only once the petitioner gave particulars as to the dates on which Gram Sabha was called. It was pointed out that in the year 1997-98 on 30.3.1998 gram sabha was called when only seven members remained present and therefore it was to be adjourned for want of quorum. If gram sabha is called and quorum is not there, would that constitute a lapse on the part of the petitioner is a question which was not addressed by the concerned authorities. As regards the allegation that a parcel of land was transferred to the Consumer Stores, it was contended that the resolution was passed by the panchayat after getting necessary approval. As regards construction of fountain it was contended that fountain was to be constructed from a donation given by an Industrial unit of Rs. 2 lakhs and it was to be constructed as per their own specifications and only a

sum of Rs. 355/- was spent more to put up a name tablet and that in the panchayat meeting the entire expense of Rs. 2,00,355/- was approved. As regards, repairs of road and putting up of street lights the petitioner's contention was that appropriate resolutions were made by the panchayat and the expenses were accounted for and that rates were invited by issuing public notice and the minimum quoted rates were accepted. As regards laying pipelines for water supply, the petitioner pointed out the sanctions given and the completion certificate which was also obtained.

From the compilation which is placed on record, various resolutions of the panchayat have been pointed out which indicate that it is not as if the petitioner had on his own taken the decisions, as regards the matters which are covered under the charges. It was pointed out that though detailed material was placed on record before the District Development Officer, the District Development Officer did not take any of the material into his consideration. If he had considered the relevant material, he would have known about the resolutions passed by the panchayat. He would also have known that the petitioner had called for rates by notices which were duly published. The resolution dated 10.2.1997, if noticed by the District Development Officer, would have shown authorisation given by that unanimous resolution to the petitioner for carrying out various works during the year 1997-98. It was also pointed out that public notices which are in this compilation were issued at the instance of the petitioner and published on the panchayat's notice board and each of the members of the panchayat was informed about such public notice by sending a copy to them as recorded below the order for issuance of public notice. A copy was also forwarded to the Taluka Development Officer. Attention of the court was drawn to the public notice dated 12.2.1997 which is in the compilation which shows that it was published by Talati-cum-Mantri as directed by the petitioner. Attention is also drawn to a statement dated 1.3.1997 which shows comparative rates quoted by three tenderers and that the work was given to the contractor who had quoted lowest. Similarly, attention was drawn to the resolution dated 19.3.1997 of the panchayat in respect of the street lights authorising the petitioner to see that the work was carried out. A public notice dated 1.4.1997 in respect of inviting the rates for various work for installing the street lights was also pointed out. That notice also shows that it was published by the Talati-cum-Mantri on the notice board of the village panchayat and that each member was informed

about the same and further that a copy was also forwarded to the Taluka Development Officer. Comparative rates which were received in respect of various items for street lights were also pointed out and it was submitted that in all these cases work was given to those who had offered lowest rates.

It was pointed from the order of the District Development Officer that the petitioner had in support of his written supply submitted relevant materials which were on pages 387 to 597 of the file. Even in the order of the appellate authority a reference is there to the record of 138 pages filed by the petitioner before the District Development Officer and to the contention that the District Development Officer had not taken these documents into his consideration.

On going through the decision of the District Development Officer as well as the appellate authority it becomes clear that very material documents which seem to have been produced by the petitioner, have been totally ignored while giving findings on the above charges against the petitioner. The manner in which the enquiry was started at the behest of the higher ups who were keen to see to it that it should be speedily done leaves one wondering. Moreover, there seems to be a deliberate avoidance to refer to the relevant resolution of the panchayat which would indicate that it was not as if the petitioner had himself undertaken these works but it was the panchayat which had collectively authorised him to undertake all these works and nothing was done behind the back of the panchayat members. Even public notices which were issued inviting rates and the comparative charges which were received and the fact that lowest offerers were given the work had been ignored. The relevant material which has a direct bearing on the charges which are levelled against the petitioner has not been taken into consideration though it appears to have been placed on record as is reflected from the orders of the District Development Officer as well as the appellate authority. Even the preliminary enquiry report of the Taluka Development Officer was obtained almost under a threat of the District Development Officer that action would be taken against him unless he promptly report against the petitioner. The authorities have ignored the fact that there have been ratification orders and resolutions made and have not considered the impact of such ratification.

The appellate order therefore cannot be sustained and is hereby set aside with a direction to the appellate authority to reconsider the matter in light of the

material which is on record by duly calling for the record and proceeding from the District Development Officer and take a fresh decision after hearing both sides. This should be done, having regard to the fact that the petitioner is kept out of statutory office, by rendering a decision, after taking into account all the relevant material, within two weeks from the date of receipt of the order. Rule is made absolute accordingly with no order as to costs. It will be open for the petitioner to move the appellate authority for interim stay of further operation of the order of the District Development Officer.

(R.K. ABICHANDANI, J)

(pkn)